

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

Paragon Construction & Development, Inc.  
Montgomery, Alabama

Demolition – USA Travel Center  
2579 Cobbs Ford Road  
Prattville, Elmore County, Alabama

CONSENT ORDER No. 16-\_\_\_\_-CAP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” and/or “ADEM”) and Paragon Construction & Development, Inc. (hereinafter, the “Paragon”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code, §§22-22A-1 through 22-22A-16, (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

1. Paragon was contracted to demolish the USA Travel Center (hereinafter, the “Travel Center”), located at 2579 Cobbs Ford Road, Prattville, Elmore County, Alabama.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. The U.S. Environmental Protection Agency's National Emission Standard for Hazardous Air Pollutants (NESHAP), found at 40 C.F.R. Part 61, Subpart M, is incorporated by reference in ADEM Admin. Code r. 335-3-11-.02(12).

5. 40 C.F.R. § 61.141 defines regulated asbestos-containing material (RACM) as Friable, Category I nonfriable, and Category II nonfriable.

6. 40 C.F.R. § 61.145(b)(3)(i) requires the owner or operator of a demolition or renovation activity for a subject facility to provide written Notice of Intention to Demolish or Renovate (hereinafter, "Notice of Demolition") at least ten workdays before demolition, asbestos stripping or removal work, or any other activity which disturbs the asbestos, begins.

7. 40 C.F.R. § 61.141 defines a facility as any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units).

8. 40 C.F.R. § 61.145(c)(1) requires the removal of all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.

## DEPARTMENT'S CONTENTIONS

9. On March 29, 2016, the Department discovered that the Travel Center had been demolished.

10. The Department did not receive a Notice of Demolition from Paragon prior to the demolition of the Travel Center.

11. On April 20, 2016, the Department issued a Notice of Violation (NOV) to Paragon requesting compliance information, with a response being due to be received by the Department on or before May 27, 2016.

12. On May 19, 2016, the Department received a response to the NOV from Paragon stating that neither an asbestos inspection nor abatement were performed at the Travel Center prior to it being demolished, in violation of ADEM Admin. Code r. 335-3-11-.02.

13. Pursuant to Ala. Code § 22-22A-5(18)c., *as amended*, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day

such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: Paragon did not submit the required Notification of Demolition or abate the structure of asbestos-containing materials before demolishing the Travel Center, which could have exposed workers and others nearby to elevated levels of asbestos fibers. The Department considers these violations to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by Paragon to comply with the applicable requirements of the ADEM Admin. Code R.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Paragon likely derived economic benefit by not performing an asbestos inspection and properly removing asbestos containing materials before demolishing the Travel Center.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There appeared to be no efforts by Paragon to mitigate possible effects of these violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: Paragon has no known prior violations of asbestos regulations with the Department.

F. THE ABILITY TO PAY: Paragon has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement, and has concluded that a civil penalty



herein is appropriate (*See* “Attachment A” which is hereby made a part of these Contentions).

14. The Department neither admits nor denies Paragon’s contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without unwarranted expenditure of State resources in prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

#### PARAGON’S CONTENTIONS

15. Paragon neither admits nor denies the Department’s contentions. Paragon consents to abide by the terms of this Consent Order and pay the civil penalty assessed herein.

#### ORDER

THEREFORE, Paragon, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement and has determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Paragon agree to enter into this Consent Order with the following terms and conditions:

A. Paragon agrees to pay to the Department a civil penalty in the amount of \$3,500.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Paragon agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

C. Paragon agrees, that immediately upon receipt of this Order and continuing thereafter, to comply with 40 C.F.R. Part 61, Subpart M, as adopted by ADEM Admin. Code r. 335-3-11-.02, particularly as it applies to renovation and demolition operations.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the alleged violations and/or deviations which are cited in this Consent Order.

F. Paragon agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, Paragon agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. Paragon also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Paragon shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Paragon, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Paragon) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increase costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of Paragon, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and Paragon agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances reference herein. Should additional facts and circumstances be

discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and Paragon shall not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if future orders, litigation, or other enforcement action addresses new matters not raised in this Consent Order.

I. The Department and Paragon agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Paragon does hereby waive any hearing on the terms and conditions of the same.

J. The Department and Paragon agree that this Order shall not affect its obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and Paragon agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and Paragon agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

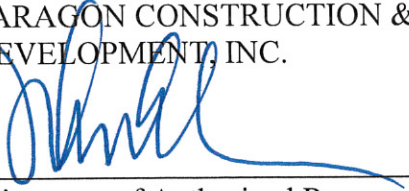
M. The Department and Paragon agree that any modifications of this Order must be agreed to in writing signed by both parties.



N. The Department and Paragon agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State, or local law, and shall not be construed to waive or relieve Paragon of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

PARAGON CONSTRUCTION &  
DEVELOPMENT, INC.

  
(Signature of Authorized Representative)

JOHN E. IVES  
(Printed Name)

PRESIDENT  
(Printed Title)

7.15.16  
(Date)

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

Lance R. LeFleur  
Director

(Date Executed)

## ATTACHMENT A

**Paragon Construction & Development, Inc.**

**Demolition of USA Travel Center  
Prattville, Elmore County, Alabama  
Demolition- 2579 Cobbs Ford Road, Prattville, AL**

<b>Violation*</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations*</b>	
Failure to notify of demolition	1	\$1,000	\$1,000	\$0	
Failure to conduct asbestos inspection	1	\$1,000	\$1,000	\$0	
					<b>Total of Three Factors</b>
<b><i>TOTAL PER FACTOR</i></b>		<b><i>\$2,000</i></b>	<b><i>\$2,000</i></b>	<b><i>\$0</i></b>	<b><i>\$4,000</i></b>

<b>Adjustments to Amount of Initial Penalty</b>	
<b>Mitigating Factors (-)</b>	
<b>Ability to Pay (-)</b>	
<b>Other Factors (+/-)</b>	- \$1,000
<b>Total Adjustments (+/-) <i>Enter at Right</i></b>	-\$1,000

<b>Economic Benefit (+)</b>	\$500
<b>Amount of Initial Penalty</b>	\$4,500
<b>Total Adjustments (+/-)</b>	-\$1,000
<b>FINAL PENALTY</b>	\$3,500.00

Footnotes

\* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.